

REMARKS

Claims 1, 3, 4 and 7 – 12 are pending in this application. The Examiner has rejected Claims 1, 3, 4 and 7 - 8 pursuant to 35 U.S.C. § 103(a) as being unpatentable for obviousness over U.S. Patent 5,792,045 [Adair] in view of U.S. Patent 6,530,881 [Ailinger, et al.]. The Examiner has also rejected Claims 9 - 12 pursuant to 35 U.S.C. § 103(a) as being unpatentable for obviousness over U.S. Patent 6,530,881 [Ailinger, et al.]. Applicant respectfully traverses the stated rejections for the following reasons.

Applicant herewith incorporates the previously stated reasons in support of patentability recited in the RESPONSE TO FIRST OFFICE ACTION dated May 6, 2003, Pgs. 7 – 9. The cited patents, taken singly or in proper combination, do not negate the patentability of the presently pending claims as listed above. A detailed discussion of the rejections follows.

Applicant agrees, generally, with the Examiner's statements concerning the elements and limitations of the claims that are not recited in Adair. See, Pgs. 3 – 4 of OFFICE ACTION dated June 3, 2003. The Examiner makes up for this long list of deficiencies by appending the description of Ailinger, et al. on Pg. 4 of the Action. However, the recited elements and limitations that the Examiner attributes to Ailinger, et al. are inaccurate and incorrect. The Examiner references Columns 5 – 6 of the '881 Ailinger, et al. patent to support the premise that "an optically clear elastomeric film may be made from a material selected from a group of elastomeric urethanes including polyether or polyester based aliphatic, polycaprolactate aliphatic, cycloaliphatic or aromatic, or any blend thereof, and specifically cites to Column. 6, Lines 5 – 10. The cited section of the '881 Ailinger, et al. patent is discussing the use of elastomeric sheet material, which may be of polyurethane, that is used in manufacturing the tube-like sheath. Urethanes, or polyurethanes, are usually crystalline compounds that are

considered to be antineoplastic agents and, as such, would not exhibit the optical clarity required of the present invention. Further, the '881 Ailinger, et al. patent specifically addresses the problem of optical clarity by requiring the use of an inelastic end cap being fitted over the sheath for the reason that the sheath is not all wavelength transparent as clear glass, but is only translucent at the very thin wall thicknesses described. See, Column 5, Lines 58 – 62. Since it is the end cap (made of an inelastic material) that is the optically clear element of the sheath of the '881 Ailinger, et al. patent, and not the elastomeric sheet material, the Examiner is both incorrect in assuming that any polyurethane can be made optically transparent; Ailinger, et al. states otherwise.

Further, the Examiner's statement that "an optically clear elastomeric film may be made from elastomeric silicones" is not what is stated in Ailinger, et al. at Column 6, Lines 5 – 10. An "additive" to the sheet material is considered to be a surface adherent that creates reduced friction to one surface of the sheet material. There is no example evidence in Ailinger, et al. that suggests otherwise, and there is no example of a film or sheet that exhibits optical clarity that may be made from an elastomeric silicone. In addition, if the Examiner is assuming that the sheet material, if it is selected to be a polyurethane, obtains any changed properties, there are no statements whatsoever in Ailinger, et al. to support this premise. Thus, lacking any support in the cited '881 Ailinger, et al patent, it is not a proper reference and it is not applied in a manner consistent with its teachings. Based upon the foregoing analysis, the '881 Ailinger, et al. patent cannot stand as a secondary reference to Adair as it does not fairly describe, teach or suggest the physical characteristics and/or properties of the structural elements of the claim, nor does the combination of Adair and Ailinger, et al. fairly describe, teach or suggest the required limitations of the structural elements of the claims. Hence, the claims recite a novel

and non-obvious combination of structural elements exhibiting physical characteristics and properties that are not found in the cited reference patents.

As to the rejection for obviousness of Claim 9 – 12, the foregoing argument concerning the teachings of the '881 Ailinger, et al. patent are well founded and are incorporated to rebut the stated rejection. The article of manufacture claims contain a number of structural elements having physical characteristics and properties that are not contained at all in the Ailinger, et al. patent. Hence, these claims also recite a novel and non-obvious combination of structural elements exhibiting physical characteristics and properties that are not found in the cited Ailinger, et al. patent.

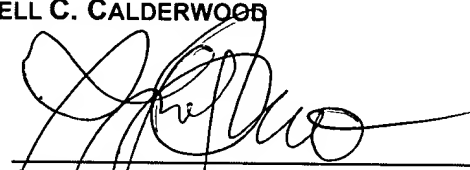
For the reasons set forth above in the foregoing argument concerning the correctness and applicability of the grounds of rejection set forth by the Examiner in the most recent OFFICE ACTION, favorable reconsideration of this application and an early NOTICE OF ALLOWANCE is earnestly solicited.

Respectfully submitted,

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DATE: **December 3, 2003**

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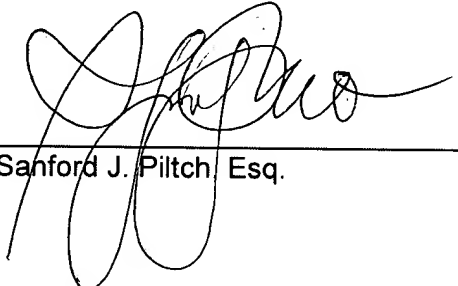
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